

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Complaint of)
JOHN D. (JACK) HOYT,)
Complainant,)
v.)
KOHALA RANCH WATER COMPANY,)
Respondent.)
_____)

DOCKET NO. 04-0296

ORDER NO. 21772

Filed April 22, 2005
At 2:30 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

2005 APR 25 A 7:55

RECEIVED

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Complaint of)
JOHN D. (JACK) HOYT,)
)
Complainant,)
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v.)
)
KOHALA RANCH WATER COMPANY,)
)
Respondent.)
_____)

Docket No. 04-0296

Order No. 21772

ORDER

By this Order, the commission: (1) approves, adopts and makes part of this Order (attached to this Order as Exhibit 1) the Mediation Agreement, dated March 30, 2005 ("March 30, 2005 Mediation Agreement") executed by JOHN D. (JACK) HOYT ("Complainant") and KRWC CORPORATION, dba KOHALA RANCH WATER COMPANY ("KRWC" or "Respondent")¹ (collectively, "Parties"), subject to the condition that Respondent provide the commission, the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), and Complainant quarterly status reports as to its progress in complying with the terms and conditions agreed to with Complainant, as set forth in their March 30, 2005 Mediation Agreement; and (2) dismisses Complainant's formal complaint ("Complaint"), without prejudice.

¹On March 2, 2000, the commission approved the transfer of KOHALA RANCH WATER COMPANY's assets, including its certificate of public convenience and necessity, to KRWC. Decision and Order No. 17580, filed on March 2, 2000, in Docket No. 99-0390.

I.

Introduction

On October 1, 2004, Complainant filed a Complaint with the commission against Respondent, pursuant to Hawaii Administrative Rules ("HAR") § 6-61-67. Complainant alleges that Respondent engaged in the following activities:

1. "Excessive, unfair, and unreasonable charges for loss of water during one-month billing period due to hidden underground break in irrigation system[;]" and
2. "Failure to conduct meter testing and hearing procedures in a fair and reasonable manner."²

The Complaint appears to request that the commission review Respondent's rates, fares, classifications, charges or rules, and find that such rates, fares, classifications, charges or rules are unfair and unreasonable. Furthermore, the Complaint seeks the following relief:

1. "Direct [Respondent] to adopt a policy for hidden or accidental water loss in keeping with County Water District of 1.5 times the average monthly bill for the previous 12 months[;]"
2. "Grant a one-time adjustment to [Complainant] for water lost due to a failure of the irrigation system during the 1/5/04-3/8/04

²Complaint at 1.

billing cycle in keeping with the County Water District Policy described above[;]" and

3. "Review and establish consumer protection procedures in [Respondent's] tariffs such that hearings are conducted in public with witnesses and meters are tested in an independent, verifiable, timely manner when appropriate."³

On November 5, 2004, the commission issued Order No. 21455 directing Respondent to either satisfy the matters complained of and file an answer reporting that it has satisfied the matters raised in the Complaint or file an answer to the Complaint within twenty (20) days after the date of service of such order.

On November 16, 2004, Respondent filed its answer to the Complaint ("Answer") in accordance with Order No. 21455 alleging the following:

1. Respondent's charge to Complainant is not excessive, unfair and unreasonable under the circumstances; and
2. Respondent did not fail to conduct meter testing and procedures in a fair and reasonable manner.

Based on the foregoing, Respondent requests that the commission deny the Complainant's requested relief set forth in the Complaint.

³Id. at 4.

On December 3, 2004, Complainant filed a response to Respondent's Answer.

On January 4, 2005, the commission issued Order No. 21526 requiring the Complainant and Respondent (collectively, referred to as "Parties") to participate in nonbinding mediation prior to the commencement of a commission hearing, subject to certain guidelines and conditions,⁴ and suspended all further proceedings in this matter pending the outcome of the nonbinding mediation.

On April 5, 2005, Complainant submitted the Parties' March 30, 2005 Mediation Agreement for the commission's consideration.

II.

Discussion

Upon review, the commission finds the terms and conditions stipulated by the Parties and memorialized in their March 30, 2005 Mediation Agreement to be reasonable. Therefore, the commission concludes that the March 30, 2005 Mediation Agreement should be approved, adopted and made part of this Order (attached to this Order as Exhibit 1), subject to

⁴In particular, Condition No. 2 of Order No. 21526 states, in relevant part, that "[u]nless otherwise extended by the commission, the mediation period shall not exceed thirty (30) days from the date of [Order No. 21526]." On January 25, 2005, the commission granted Complainant's motion to extend the mediation period from thirty (30) days to sixty (60) days, subject to certain requirements. On March 15, 2005, the commission granted Complainant's motion to extend the mediation from sixty (60) days to one hundred twenty (120) days, subject to the requirements that the Parties report in writing the status of the mediation within one hundred (100) days from the date of Order No. 21526.

the condition that Respondent provide the commission, the Consumer Advocate, and Complainant quarterly status reports as to its progress in complying with the terms and conditions agreed to with Complainant, as set forth in their March 30, 2005 Mediation Agreement. The first quarterly status report is due within one hundred twenty (120) days from the date of this Order, and each report filed thereafter shall subsequently be due within one hundred twenty (120) days from the due date of the previous report. Furthermore, in light of the representations made by the Parties in their March 30, 2005 Mediation Agreement, we also find good cause to dismiss the Complaint, without prejudice.⁵

III.

Orders

THE COMMISSION ORDERS:

1. The Parties' March 30, 2005 Mediation Agreement, filed on April 5, 2005, is approved, adopted and made part of this Order (attached to this Order as Exhibit 1), subject to the condition that Respondent provide the commission, the Consumer Advocate, and Complainant quarterly status reports as to its progress in complying with the terms and conditions agreed to with Complainant, as set forth in their March 30, 2005 Mediation Agreement. Unless otherwise ordered, the first quarterly status

⁵The commission commends the Parties for their time and efforts in participating in nonbinding mediation and in ultimately resolving the instant matter without the need of commission hearings.

report is due within one hundred twenty (120) days from the date of this Order, and each report filed thereafter shall subsequently be due within one hundred twenty (120) days from the due date of the previous report.

2. The Complaint is dismissed, without prejudice.

3. To the extent feasible and unless otherwise ordered, Respondent shall promptly comply with the terms and conditions agreed to with Complainant, as set forth in their March 30, 2005 Mediation Agreement and the reporting condition set forth in this Order. Failure to promptly comply with these conditions may constitute cause to void this Order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii APR 22 2005.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By Wayne H. Kimura
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

By Janet E. Kawelo
Janet E. Kawelo, Commissioner

Kris N. Nakagawa
Kris N. Nakagawa
Commission Counsel

04-0296.eh



WEST HAWAII

MEDIATION CENTER

P.O. Box 7020 • Kamuela, HI 96743
 808-885-5525 • 808-326-2666 • 808-887-0525 fax
www.whmediationcenter.org

First Party Jack HoytDate 3-30-05Second Party Don Bowles

File No. _____

Third Party _____

Court No. _____

Agreement

We, the undersigned, have participated in a mediation session on (date) March 30, 2005
 and, being satisfied that the provisions of the resolution of our dispute are fair and reasonable, hereby agree to abide by and fulfill the following:

1. A copy of this agreement may be provided to the appropriate court or contracted referral source.
2. West Hawaii Mediation Center will maintain a copy of this agreement for 3 years from the date of agreement and will release a copy only to the original parties upon written request.

3. Kohala Ranch Water Company will, within a
reasonable length of time propose adoption of
the following:

A. a rule similar or equal to the County of Hawaii's
 Water Supplies policy regarding consumer bills
 in the event of leakage or similar mishap.
 Parties agree to clarify this agreement by reference
 to the applicable County of Hawaii rule(s) regarding
 this issue.

B. Amending ~~Rules + Regs.~~ ^{map} Kohala Ranch Water
Co.'s Rules + Regs. to provide that if a hearing is
requested by consumer, a hearing will be scheduled by
mutual agreement within (5) working days of the date of shut off

If you have questions concerning any aspect (e.g. legal, financial, etc.) of this agreement, please check with a qualified advisor before signing.

[Signature]
 Mediator

[Signature]
 Mediator

[Signature]
 First Party

[Signature]
 Second Party

 Third Party



WEST HAWAII

MEDIATION CENTER

P.O. Box 7020 • Kamuela, HI 96743

808-885-5525 • 808-326-2666 • 808-887-0525 fax

www.whmediationcenter.org

First Party Jack Hoyt

Date 3-30-05

Second Party Dan Bowles

File No. _____

Third Party _____

Court No. _____

Agreement

We, the undersigned, have participated in a mediation session on (date) _____ and, being satisfied that the provisions of the resolution of our dispute are fair and reasonable, hereby agree to abide by and fulfill the following:

1. A copy of this agreement may be provided to the appropriate court or contracted referral source.
2. West Hawaii Mediation Center will maintain a copy of this agreement for 3 years from the date of agreement and will release a copy only to the original parties upon written request.

3. C. Amending KRWC. Rules 10.1 - Meter Test shall provide that meters will be tested within (5) working days of written request of consumer.

4. Kohala Ranch Water Company agrees to pay Jack Hoyt \$1,168.95 in full settlement of Hoyt's Monetary claims.

5. Jack Hoyt agrees to withdraw his complaint filed before the Public Utilities Commission - Docket #04-02-96 once + for all.

If you have questions concerning any aspect (e.g. legal, financial, etc.) of this agreement, please check with a qualified advisor before signing.

[Signature]
Mediator

[Signature]
Mediator

[Signature]
First Party
[Signature]
Second Party

Third Party

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21772 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

JOHN D. (JACK) HOYT
P.O. Box 1141
Kapa'au, HI 96755

KRWC CORPORATION, dba
KOHALA RANCH WATER COMPANY
c/o WALLY CAMPBELL
59-916 Kohala Ranch Road
Kamuela, HI 96743

KENT D. MORIHARA, ESQ.
ISHIKAWA, MORIHARA, LAU & FONG LLP
Davies Pacific Center
841 Bishop Street, Suite 400
Honolulu, HI 96813

Attorney for KRWC CORPORATION, dba
KOHALA RANCH WATER COMPANY



Karen Higashi

DATED: APR 22 2005